of their matrimonial troubles was her refusal to hand over her pay cheques to the petitioner after the birth of their child. She had already handed over to him a total of over $17,000 of her salary from the date of her marriage to the petitioner in February 1975. After the birth of the child in December 1976 she refused to hand over her pay cheques to the petitioner as she felt insecure of herself and of the future of her child.

In order to establish the matrimonial offence of cruelty it must be shown that the acts and conduct complained of were grave and weighty to such an extent as to cause danger to the petitioner's health both body or mind or a reasonable apprehension of such a danger. The standard of proof required to establish cruelty is not beyond reasonable doubt as in a criminal case but is merely to prove it on preponderance of evidence that is on a balance of probabilities. Intention is not a necessary ingredient of cruelty. The question to be decided is whether the respondent's conduct is cruel rather than whether the respondent is a cruel person.

It is in the light of these principles that the present case has to be decided. On the evidence that has been adduced in this case I have come to the conclusion that the petitioner has failed to prove cruelty on the part of the respondent. The parties were married in February 1975 and the respondent has been handing over her pay cheques to the petitioner over the years. There was the evidence of the respondent which I accept that the petitioner was throughout very tight with his money and she had little liberty to use any amount of her salary for herself. She earned a salary of about $700 per month which she handed over to the petitioner who in turn gave her $100 per month as allowance out of which she had to pay for her daily necessities and expenses in the school canteen. Whenever she enquired about the accounts the petitioner would become angry and put her off. The petitioner would be annoyed if the pay cheques were not handed over to him in time and eventually when the respondent stopped handing over the pay cheques the quarrels became more intense.

I accept the evidence of the respondent that the petitioner's conduct was the cause of their matrimonial troubles. The petitioner does appear to have a greater affection for the respondent's salary rather than for his wife or his child. He alleged in his petition that he suffered ill-health and that his efficiency at work as a doctor in Tampin was also adversely affected by the conduct of the respondent. The evidence however does not support this. During the time that they lived together the petitioner had taken only two days medical leave for a common cold and he was also being considered for a promotion.

Spouses take each other for better or worse and having entered into matrimony they must accept the ordinary wear and tear of married life. The evidence adduced in this case does not establish that the conduct of the respondent was of such a grave and weighty nature as to make cohabitation virtually impossible. Their quarrels were of a trivial nature and largely because of the pay cheques.

In the circumstances therefore I find that the petitioner has failed to prove his case and his petition is accordingly dismissed with costs to be taxed. The question of maintenance for the respondent and custody of the child will be considered in chambers at a later date.

Order accordingly.

Solicitors: *Gunaretnam & Co.; Manuel & Segran.*

THERESA TEH v. LUKE LIM (& 2 OTHER PARTIES CITED)

[O.C.J. (Ajaib Singh J.) November 9, 1979]
[Seremban — Petition for Divorce No. 13 of 1977]

Family Law — Divorce — Cruelty on husband's part — Wife's adultery — Suppression of fact of adultery by petitioner/wife — Discretionary bar to matrimonial relief — Exercise of court's discretion in husband's favour.

The petitioner in this case sought divorce from her husband on the ground of cruelty. In support of her case she produced several police reports and medical certificates. The respondent had not seriously challenged her allegations of assault but said that he had tried to stop her from going out late at night.

The respondent in turn alleged that the petitioner had committed adultery with two persons cited in his cross-petition. He said that he had heard about his wife's association with one Koh, the first party cited, and as for the second party cited, one Tan, he had seen him living together with his wife and one younger daughter in Singapore. The petitioner denied all these allegations.

The respondent claimed for damages against the two parties cited.

Held: (1) the petitioner having proved cruelty against the respondent she would be entitled to a *decree nisi* but she had wilfully and deliberately suppressed the fact of her own adultery with the second party cited. This meant that there was a discretionary bar to the matrimonial relief which she sought;

(2) the court's discretion should be exercised in favour of the respondent as he had proved adultery against the petitioner and as there was no bar to the relief which he sought. The respondent would therefore be granted a *decree nisi* to be made absolute after three months;

(3) the respondent was not altogether free from blame for having placed his wife in a position where she had an opportunity of having affairs with other men. Damages would therefore not be ordered against the parties cited.

PETITION FOR DIVORCE.

N. Ramachandran for the petitioner.

John Fernandez for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: I shall deal with the petitioner's case first. She seeks divorce from her husband on ground of cruelty. In support of her case she has given evidence herself and has produced several police reports and medical certificates. The respondent has not seriously challenged her allegations of assault but says that he had tried to stop her from going out late at night. On the evidence before me I am quite satisfied that the petitioner had proved her allegations of assault against the respondent and has thus proved cruelty against him.

The respondent in turn has alleged that the petitioner has committed adultery with two persons whom

he has cited in his cross-petition. In support of his allegations he said that he had heard about his wife's association with one Koh Teck Soon the 1st party cited and as for the 2nd party cited Tan Chan Huat he had seen him living together with his wife and one younger daughter in a flat in Singapore. The petitioner had denied all these allegations but having heard the evidence in this case I am satisfied that the respondent has on his part adduced sufficient evidence which conclusively proves that the petitioner has committed adultery with Tan Chan Huat the 2nd party cited but not against the 1st party cited.

The petitioner having proved cruelty against the respondent she would be entitled to a *decree nisi* but she has wilfully and deliberately suppressed the fact of her own adultery with the 2nd party cited which means that there is a discretionary bar to the matrimonial relief which she now seeks. Having herself committed adultery she should have prayed for the court's discretion in her petition and at the same time filed in court a discretion statement setting out all the facts relating to her adultery with the 2nd party cited in accordance with the Divorce Rules. This she has failed to do and in all the circumstances of the case I refuse to exercise my discretion in her favour and her petition is accordingly dismissed.

The respondent has proved adultery against the petitioner and he is therefore entitled to succeed in his petition as there is no bar to the relief he seeks. He is granted a *decree nisi* to be made absolute after three months.

The respondent has also prayed that the two parties cited be condemned by way of damages. However I do not propose to order damages against any of the party cited. The respondent has adduced insufficient evidence to establish adultery on the part of petitioner against the 1st party. He has however proved adultery by the petitioner against the 2nd party cited but on the evidence before me I find that the respondent was not altogether free from blame for having placed his wife in a position where she had an opportunity of having affairs with other men. The respondent was living in a flat in Jurong where no less than eight male persons were sharing a room on rent. It was within his knowledge also that the 1st and 2nd party cited were on more than friendly terms with the petitioner and at least one of them was his tenant. I therefore do not feel justified in ordering damages against the parties cited.

The petitioner and the respondent will bear their own costs. The petitioner does not seek custody of two of her children but would like to have custody of the third child as well as access to the two children who are now living with the respondent. These and other ancillary matters will be heard in chambers at a later date.

Order accordingly.

Solicitors: *N. Ramachandran & Co.; John Fernandez & Co.*

LIM KIM HOCK v. LEE AH KOONG

[O.C.J. (Yusoff Mohamed J.) December 11, 1979]
[Kuching — Civil Suit No. K.246 of 1973]

Tort — Detinue — Taxi purchased by plaintiff but registered in defendant's name — Claim for return of taxi or damages — Arrangement tainted with illegality — Whether claim allowed.

The plaintiff in this case was the driver of taxi KA6262 on August 20, 1973 when the defendant by his servants seized the taxi from him. The plaintiff had bought taxi No K4373 from one Tay on December 31, 1965 with the right to use the taxi permit issued in respect of that vehicle. Both the vehicle and the taxi permit were registered in the defendant's name. This arrangement was made because of the condition attached to the taxi permit that it was not transferable. Taxi K4373 was replaced with another taxi No. KA2611. This taxi was also registered in the defendant's name in order that the plaintiff could use it in accordance with the taxi permit issued to the defendant. In 1968 the plaintiff subsequently replaced taxi KA2611 with another bearing registration No. KA6262 which he had bought from Messrs Syn Chin Huat Hin. The said vehicle was also registered in the defendant's name following the previous arrangement.

The defendant submitted that he had sold the original taxi K4373 to Tay on April 26, 1965 with the right for the purchaser to use the taxi permit issued in his name. He said that because Tay had defaulted in paying the price of the said taxi, he had the right to take possession of the said taxi or any other vehicle which was subsequently replaced both by reason that he had not been paid for the price of the original taxi and the fact that the taxi was still registered in his name.

Held, allowing the plaintiff's claim: (1) the plaintiff had bought the original vehicle from Tay and he had no notice that Tay had not paid the defendant its value. He had acquired the said vehicle *bona fide* from Tay for value and in those circumstances he could claim ownership of the vehicle against the defendant;

(2) although the transaction was tainted with illegality, in order to overcome the condition imposed on the taxi permit, nevertheless, the transaction was fully executed and carried out and the property had been passed to him by the sale and delivery of the vehicle;

(3) as the owner of the vehicle the plaintiff had the right to its immediate possession at the right time of commencing the action; he was therefore entitled to the return of the taxi;

(4) since the taxi KA6262 had already been sold by the defendant, the plaintiff should be entitled to the value of the taxi at the sum of $4,300 which amount he had paid for;

(5) as to the damages for detinue, the income was earned by the plaintiff during the period of detention of the said taxi, derived from his illegal activity in running the taxi contrary to the condition imposed on the permit issued in respect of the vehicle. In law, he had not lost anything which was rightfully his and he was therefor not entitled to damages.

Cases referred to:-

(1) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52.
(2) *Scarfe* v. *Morgan* (1838) 4 M. & W. 270, 281.

CIVIL SUIT.

J.C. Wong for the plaintiff.

Maria Kana for the defendant.

Yusoff Mohamed J. (delivering oral judgment): The plaintiff's claim is for a declaration that he is the owner of taxi KA6262 and for the return of the said taxi or its value and damages, alternatively he also claims damages in detinue.

The evidence shows that the plaintiff was the driver of this taxi KA6262 on August 20, 1973 when the defendant by his servants seized the taxi from him.